

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 226

AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-2-1.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.2. (a) As used in this section, "landlord" refers to a landlord or a person acting on a landlord's behalf.**

(b) A landlord that distributes water or sewage disposal service from a public utility or a municipally owned utility to one (1) or more dwelling units is not a public utility solely by reason of engaging in this activity if the landlord complies with all of the following:

- (1) The landlord bills tenants, separately from rent, for:**
 - (A) the water or sewage disposal service distributed; and**
 - (B) any costs permitted by subsection (c).**
- (2) The total charge for the services described in subdivision (b)(1)(A) is not more than what the landlord paid the utility for the same services, less the landlord's own use.**
- (3) The landlord makes a disclosure to the tenant that satisfies subsection (d). A disclosure required by this subdivision must be in:**
 - (A) the lease;**
 - (B) the tenant's first bill; or**
 - (C) a writing separate from the lease signed by the tenant**

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before entering into the lease.

(c) A landlord may charge only the following costs under subsection (b)(1)(B):

- (1) A reasonable initial set-up fee.
- (2) A reasonable administrative fee that may not exceed four dollars (\$4) per month.
- (3) A reasonable fee for the return for insufficient funds of an instrument in payment of charges.

(d) A disclosure required by subsection (b)(3) must:

- (1) be printed using a font that is not smaller than the largest font used in the lease; and
- (2) include the following:
 - (A) A description of the water or sewage disposal services to be provided.
 - (B) An itemized statement of the fees that will be charged as permitted under subsection (c).
 - (C) The following statement: "If you believe you are being charged in violation of this disclosure or if you believe you are being billed in excess of the utility services provided to you as described in this disclosure, you have a right under Indiana law to file a complaint with the Indiana Utility Regulatory Commission. You may contact the Commission at (insert phone number for the tenant to contact the Commission)."

(e) If a complaint is filed under section 34.5 or 54 of this chapter alleging that a landlord may be acting as a public utility in violation of this section, the commission shall:

- (1) consider the issue; and
- (2) if the commission considers necessary, enter an order requiring that billing be adjusted to comply with this section.

SECTION 2. IC 8-1.5-2-4, AS AMENDED BY P.L.113-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. Whenever the municipal legislative body determines to sell or otherwise dispose of nonsurplus municipally owned utility property, it shall by ordinance or resolution, by a two-thirds (2/3) vote, provide for the following:

(1) The appointment, as follows, of **three (3) residents of Indiana to serve as appraisers:**

- (A) One (1) disinterested freeholder residing in the municipality; and person who is an engineer licensed under IC 25-31-1.
- (B) ~~Two (2)~~ One (1) disinterested appraisers appraiser

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licensed under IC 25-34.1.

who are residents of Indiana;

(C) One disinterested person who is either:

(i) an engineer licensed under IC 25-31-1; or

(ii) an appraiser licensed under IC 25-34.1.

(2) The appraisal of the property. ~~and~~

(3) The time that the appraisal is due.

~~One (1) of the appraisers appointed under subdivision (1)(B) must reside not more than fifty (50) miles from the property:~~

SECTION 3. IC 8-1.5-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Each appraiser appointed as provided by section 4 of this chapter must:

(1) by education and experience, have such expert and technical knowledge and qualifications as to make a proper appraisal and valuation of the property of the type and nature involved in the sale;

(2) be a disinterested person; and

(3) not be a resident or taxpayer of the municipality.

(b) The appraisers shall:

(1) be sworn to make a just and true valuation of the property; and

(2) return their appraisal, in writing, to the municipal legislative body within the time fixed by the **ordinance or** resolution appointing them.

(c) If all three (3) appraisers cannot agree as to the appraised value, the appraisal, when signed by two (2) of the appraisers, constitutes a good and valid appraisal.

(d) ~~Not later than fifteen (15) days~~ **If, after the return of the appraisal by the appraisers to the legislative body, the legislative body decides to proceed with the sale or disposition of the nonsurplus municipally owned utility property, the legislative body shall, not later than forty-five (45) days after the return of the appraisal, hold a public hearing to do the following:**

(1) Review and explain the appraisal.

(2) Receive public comment on the proposed sale or disposition of the nonsurplus municipally owned utility property.

(3) Adopt an ordinance providing for the sale or disposition of the nonsurplus municipally owned utility property. The legislative body is not required to adopt an ordinance under this subdivision if, after the hearing, the legislative body determines it is not in the interest of the municipality to proceed with the sale or disposition.

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Notice of ~~a the~~ hearing on an ordinance providing for sale or disposition of the property and the total valuation of the property as fixed by the appraisal shall be published in the manner prescribed by IC 5-3-1.

(e) The hearing on the ordinance providing for sale or disposition may not be held for thirty (30) days after notice is given as required by subsection (d).

(f) If:

(1) the legislative body adopts an ordinance under subsection (d)(3); and

(2) within this the thirty (30) day period described in subsection (e), at least the number of the registered voters of the municipality required under IC 3-8-6-3 for a petition to place a candidate on the ballot sign and present a petition to the legislative body opposing the sale or disposition;

the legislative body shall submit the question as to whether the sale **or disposition** shall be made to the voters of the municipality at a special or general election. In submitting the public question to the voters, the legislative body shall certify the question to the county election board of the county containing the greatest percentage of population of the municipality under IC 3-10-9-3. The county election board shall adopt a resolution setting forth the text of the public question and shall submit the question as to whether the sale **or disposition** shall be made to the voters of the municipality at a special or general election on a date specified by the municipal legislative body. **Pending the results of an election under this subsection, the municipality may not take further action to sell or dispose of the property as provided in the ordinance.**

(g) If a majority of the voters voting on the question vote for the sale **or disposition**, the legislative body shall proceed to sell the property as provided in the ordinance.

(h) If a majority of the voters voting on the question vote against the sale **or disposition**, the sale may not be made.

(i) If:

(1) the legislative body adopts an ordinance under subsection (d)(3); and

(2) after the expiration of thirty (30) days as provided in subsection (e), a petition is not filed;

the municipal legislative body ~~shall~~ **may** proceed to sell the property as provided in the ordinance.

SECTION 4. IC 8-1.5-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) ~~After the~~

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hearing required by section 5 of this chapter and before any election that may be required by that section; The municipal legislative body may adopt an ordinance providing **adopted by the municipal legislative body under section 5(d) of this chapter must provide** for:

- (1) the sale or disposition of the municipally owned utility property;
- (2) the manner of the sale **or disposition**;
- (3) the price, terms, and conditions of the sale **or disposition**, which must be consistent with any contractual obligations previously incurred under IC 8-1-2.2; and
- (4) the officer or officers who are to execute the proper documents conveying title on behalf of the municipality.

(b) The property may not be sold for less than its full appraised value, as set forth in the appraisal, less the amount of any bonds, liens, or other indebtedness due upon the property, and only in accordance with contractual obligations incurred under IC 8-1-2.2. The indebtedness shall either:

- (1) be paid in accordance with the terms and conditions of the instruments governing the indebtedness before the sale; or
- (2) be assumed and paid by the purchaser as part of the purchase price of the property.

(c) This subsection applies if a municipal legislative body adopts an ordinance for the sale or disposition of municipally owned utility real property by acceptance of bids. A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

- (1) beneficiary of the trust; and
- (2) settlor empowered to revoke or modify the trust.

(d) The proceeds of any sale under this chapter shall be paid into the treasury of the municipality making the sale and become part of the general fund.

SECTION 5. IC 8-1.5-2-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) A municipality may not issue bonds, notes, or other obligations under this chapter without the approval of the commission **if the bond, notes, or other obligations are payable more than twelve (12) months after their execution**, except as authorized by IC 8-1-2.2-11.

(b) If the evidence presented to the commission establishes that the rates and charges proposed by the municipally owned utility will provide sufficient funds for the operation, maintenance, and depreciation of the utility, and to pay the principal and interest of the proposed bond issue, together with a surplus or margin of at least ten percent (10%) in excess, the commission shall so certify in its order

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approving the issuance of bonds.

SECTION 6. IC 8-1.5-2-19.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19.5. If a municipality desires to purchase and install equipment for its utility which requires more than three (3) months lead time for the supplier to make such equipment and installation available, the legislative body may, by ordinance, approve a contract therefor even though it does not have sufficient funds appropriated or on hand to pay for such purchase if the utility:

(1) has annual net operating revenues for the immediately preceding calendar year sufficient to permit the municipality:

(A) to pay the principal of and interest on an issue of its utility revenue bonds in the principal amount necessary to fund such purchase (including engineering costs, legal costs, and costs of bond issuance associated therewith); and

(B) a margin of safety which it deems necessary to market such bonds on acceptable terms;

(2) **if required by section 19 of this chapter**, has received approval from the commission to issue bonds, notes, or other obligations sufficient to fund such purchase; or

(3) has received approval from the commission to raise its rates and charges in an amount sufficient to permit the issuance of said bonds.

SECTION 7. **An emergency is declared for this act.**

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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